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STATE AUDITORS OFFICE

**OFFICE OF THE MONTANA STATE AUDITOR
COMMISSIONER OF SECURITIES AND INSURANCE**

In the Matter of

RIAN MATTHEW WALKER

Respondent.

Case No. INS-2016-311

FINAL AGENCY DECISION

The Montana State Auditor, Commissioner of Securities and Insurance (Commissioner), has reviewed the Hearing Examiner's January 22, 2018, Proposed Findings of Fact and Conclusions of Law, and Order (Exhibit A) in this matter. On January 23, 2018, the Respondent was served a Notice of Opportunity to File Exceptions and Scheduling Order (Notice). In the Notice, the Respondent was notified that he had until February 23, 2018, within which to file exceptions to the Proposed Findings of Fact, Conclusions of Law and Order, and request a hearing. In the Notice, the Respondent was notified that failure to respond by that time would constitute a waiver of his right to judicial review of the proposed order.

No exceptions or request for a hearing were filed by the Respondent. Therefore, the Commissioner finds good cause to enter the following:

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2. Pursuant to Mont. Code Ann. § 33-17-1001, it is hereby ORDERED that Respondents application for an individual adjuster license is DENIED.

M. Williams, Esq.

cc: Mike Winsor, CSI
Respondent

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JAN 23 2018

MONTANA
STATE AUDITORS OFFICE**OFFICE OF THE MONTANA STATE AUDITOR
COMMISSIONER OF SECURITIES AND INSURANCE**

**IN THE MATTER OF
RIAN MATTHEW WALKER,**

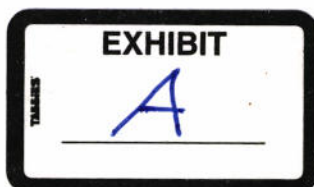
Respondent.

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Case No. INS-2016-311

**HEARING EXAMINER'S PROPOSED
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

Rian Matthew Walker requested a hearing on the Office of the Montana State Auditor, Commissioner of Securities and Insurance (CSI)'s denial of his application for an independent insurance adjuster license. On March 31, 2017, Hearing Examiner Michael J. Rieley conducted a hearing pursuant to § 33-1-701, MCA, and the Montana Administrative Procedure Act, §§ 2-4-601, et seq., MCA. Mike Winsor represented the CSI and presented testimony from CSI Licensing Bureau Chief Jeannie Keller. Mr. Walker appeared pro se and presented testimony from himself.

Hearing Examiner Rieley admitted five exhibits presented by the CSI during the hearing: Mr. Walker's application for an independent adjuster license (Exhibit (Exh.) 1); Mr. Walker's summary of his criminal history and statement (Exh. 2); Mr. Walker's criminal history report from the Montana Department of Justice (Exh. 3); Mr. Walker's judgment and sentence for theft, felony common scheme (Exh. 4); and a printout of Mr. Walker's file on the Montana Department of Corrections Correctional Offender Network website (CON Web) (Exh. 6).

**HEARING EXAMINER'S PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER
PAGE 1**

Following the hearing, the CSI filed its proposed findings of fact and conclusions of law, and Mr. Walker e-mailed Hearing Examiner Rieley indicating he would rely on the record from the proceedings.

Before issuing a ruling, Hearing Examiner Rieley unexpectedly passed away. On November 30, 2017, Aislinn W. Shaul-Jensen assumed jurisdiction pursuant to § 2-4-622, MCA. In her order assuming jurisdiction, Hearing Examiner Shaul-Jensen informed the parties they had ten days to notify her of any claim that witness demeanor was at issue or object to the appointment of a new hearing examiner and a decision on the record. Neither party filed a notice or objection and, therefore, both parties waived any of those claims.

From the testimonial and documentary evidence presented, the hearing examiner makes the following proposed:

FINDINGS OF FACT

1. Mr. Walker is a resident of the State of Montana. Exh. 1 at 1.
2. On September 14, 2016, Mr. Walker applied for an independent insurance adjuster license with the CSI. Transcript of Proceedings, Mar. 21, 2017 (Tr.) 3:17-4:12.
3. Independent insurance adjusters adjust property and casualty claims. *Id.* at 8:16-17.
4. As part of their job duties, independent insurance adjusters inspect claimants' property, which may include homes, cars, personal property, or any place where a claimant resides or works. *Id.* at 8:17-19.

5. Independent insurance adjusters also have personal access to insurance funds and the insured's money. *Id.* at 8:20-9:5.

6. On his application, Mr. Walker indicated he had been charged with felonies for theft (two counts), obstructing justice, criminal possession of dangerous drugs, and criminal endangerment, and misdemeanors for obstructing justice, obstructing a law enforcement officer, resisting arrest, criminal contempt, criminal possession of drug paraphernalia, issuing a bad check, driving under the influence, obstructing a police officer, and disorderly conduct. *Id.* at 5:14-21; Exh. 2.

7. Though it was not required, Mr. Walker also included information about his juvenile criminal history. Tr. 6:3-7; Exh. 2.

8. Mr. Walker addressed his juvenile and adult criminal history and indicated he was a foster child and recently had converted to Christianity. Tr. 6:17-18; Exh. 2.

9. An indication of criminal history on an independent insurance adjuster application triggers additional review by the CSI. Tr. 4:15-17.

10. Ms. Keller, who reviewed Mr. Walker's application, thought his discussion of the home he grew up in and newfound religion were justifications or excuses for his criminal conduct. *Id.* at 6:18-19.

11. Independent insurance adjuster license applicants also are fingerprinted and subject to state and federal background checks. *Id.* at 7:1-2.

12. Mr. Walker's Montana Department of Justice (DOJ) criminal history report indicated he had felony convictions for theft, burglary, obstructing justice, and criminal possession of dangerous drugs. *Id.* at 7:12-17; Exh. 3.

13. Mr. Walker's criminal history report also indicated he had misdemeanor convictions for obstructing justice, criminal contempt, criminal possession of drug paraphernalia, issuing a bad check, obstructing a peace officer or other public servant, and disorderly conduct. Exh. 3.

14. The report also indicated Mr. Walker was had committed probation violations. Tr. 12:1; Exh. 3.

15. There were charges listed on Mr. Walker's criminal history report that he did not disclose in his application. Tr. 23:9-10.

16. The CSI looked Mr. Walker up on CON Web and noted he was still on probation. Tr. 12:15-17, 13:2-4; Exh. 6.

17. Mr. Walker will be on probation until 2021. Tr. 29:11-12.

18. Ms. Keller was concerned about Mr. Walker's criminal history. *Id.* at 4:15-17.

19. She noted Mr. Walker's criminal history spanned from when he was a juvenile up until his latest conviction in 2012, for obstructing a peace officer. *Id.* at 5:22-6:2; Exh. 3.

20. Ms. Keller testified: "the length of the report in itself shows an extensive criminal history which, in and of itself, is a concern." Tr. 12:3-4.

21. The CSI was particularly concerned with Mr. Walker's convictions for crimes of dishonesty, especially Mr. Walker's conviction for felony theft. *Id.* at 7:21-8:2.

22. Ms. Keller testified that crimes involving dishonesty have a direct relationship to the occupation of an independent insurance adjuster. *Id.* at 9:9-11.

23. Convictions for theft are concerning to the CSI because independent insurance adjusters have access to insurance funds and insured's property, which could be very valuable. *Id.* at 9:1-8.

24. Ms. Keller testified:

The independent insurance adjuster has access to determining value, looking at damage, has personal access to both the insurance funds and the property of the insured, so there is a lot of opportunity to, you know, have a problem or – I don't, I don't want to say there's an opportunity to steal – but they're . . . they have a lot of access to what could be large dollar amounts from the insured.

Id. at 9:4-8.

25. In Mr. Walker's 1994 judgment and sentence for theft, common scheme, which he submitted with his application, and which the CSI considered in its evaluation, the court noted:

By his own testimony, the defendant has admitted to a burglary of the Junglerama Day Care in Kalispell, Flathead County, Montana, the two felonies for which he is being sentenced, as well as attempting to steal marijuana and sell it for profit. As a juvenile, the defendant's criminal conduct caused him to exhaust almost every juvenile treatment facility in the State, including Pine Hills, Rivendell Youth Psychiatric Center, Rimrock Foundation, and foster placement, yet he has chosen to continue his criminal conduct. Finally, as an adult, the defendant lied to the State, thus implicating two innocent juveniles as accomplices in a burglary. The defendant admits to making this false statement for his benefit knowing that the juveniles, who were held on the charges, were innocent.

Id. at 9:23-10:12; Exh. 4 at 3-4.

26. When asked about this conviction, Mr. Walker explained he “broke into the Junglerama Day Care Center with two men, Nick and Nate. And when we were leaving, I got caught, and Nick and Nate didn’t. . . They put me in [a] police car with two juveniles I’d never seen before.” Tr. 31:4-14.

27. Mr. Walker testified that the two innocent juveniles were found guilty of the crime. *Id.* at 31:19-21.

28. Mr. Walker did not give the police the names of the real perpetrators “[b]ecause of the convict code that I stood by that you don’t see nothin’, you don’t see anything, hear anything, say anything, I wasn’t going to tell on the guys that I actually did it with.” *Id.* at 31:17-19.

29. Mr. Walker testified that, initially, he told the police the two juveniles arrested with him “didn’t have anything to do with this;” however, when “the prosecuting attorney offered me a plea bargain . . . if I were to clear up loose ends for them and tell them who did the . . . break-in with me,” Mr. Walker “took that opportunity for my own benefit to tell the courts, to write a statement saying that these two kids that have been found guilty of this are, in fact, the ones that did it with me. Which was a lie.” *Id.* at 31:14-15, 32:4-9.

30. According to Mr. Walker, he “got caught in a lie” because Nick and Nate turned themselves in. *Id.* at 32:9-13.

31. Following this conviction, Mr. Walker continued to engage in criminal conduct. *Id.* at 17:4-5, 29:15-17; Exh. 3.

32. When asked why he currently is on probation, Mr. Walker testified:

[B]efore the charges where I led the police, elude, eluding, and I ended up being convicted of criminal endangerment, I was discharged from a previous 9 years that the state imposed on me . . . for felony theft, felony theft common scheme, and for criminal possession of dangerous drugs. . . . And because there were chemicals for manufacturing drugs in my car . . . Meth . . . I was charged with manufacturing – which I didn't do any manufacturing, but there were chemicals that were included in that. I was looking at 120 years, and by the grace of God, the state saw fit to give me 10 years, 7 suspended, so I had 3 years with the Department of Corrections, and I was recommended for treatment and prerelease. . . . I don't have to bring that up because I wasn't convicted of that, but that's what I was charged with. . . . Everything in that car was mine. The thing is, is that, like I said before, I'm not here to excuse my behavior because up until that point when I sitting in jail, I had a spiritual awakening, and I came to find the Lord. I didn't care about Montana, I didn't care about my family, I didn't care about myself, I didn't care about anything but what I wanted, and that was to get high the next time. You know, so you look at 2021 as being a large amount of time on probation; that's a drop in the bucket compared to what I was looking at, and what I've already discharged for the state of Montana. And, and every bit of that time that, that I have been given, I, I did deserve it. And I deserved more. And like I said, I wasn't a good, I wasn't a good man. But that's not me today. That's . . . those are things I did, not who I am. I just, you know.

Tr. 29:14-31:3.

33. On November 10, 2016, after a full, complete review of Mr. Walker's application, the CSI refused to issue an independent insurance adjuster license to Mr. Walker. *Id.* at 13:11-14, 22:21-22; Exh. 1 at 3.

34. Mr. Walker testified he understood Ms. Keller's concerns regarding his application, stating: "if I was in her position now and I saw who I am on paper, I would have made the same decision she did." Tr. 33:7-8.

35. The basis for the CSI's denial was Mr. Walker's lengthy criminal history, particularly his felony convictions involving crimes of dishonesty. *Id.* at 13:18-20.

36. The CSI did not base its decision on one particular charge. *Id.* at 16:22-23.

37. Ms. Keller testified:

From the time he was a juvenile through 2012 there are repeated, you know, issues with the law. And where I see that as a nexus with the adjuster license is you are now stating values on what some people's homes, their property, you are currently under supervision of the Department of Corrections, and you . . . this may be an individual that comes into your home, looks to see if there's water damage in your child's bedroom. Maybe you have assets and so the question is, is what's, what's in the best interest of the consumer or the public at that point. And so that's what we review.

Id. at 17:4-10.

38. Ms. Keller further testified:

What I am going to tie my decision to is that at the end of the day, when an adjuster represents himself as licensed by this office and the state of Montana, the public has some comfort that somebody is qualified to be able to come into their home, be amongst their family, and adjust their, their material and their property. And I have a duty, and this office has a duty, to protect the consumers of Montana, and because of this extensive criminal history involving theft and dishonesty, that is of concern, and I am looking at that as a whole.

Id. at 21:5-11.

39. Ms. Keller is aware of Montana's policy favoring rehabilitation of convicted felons. *Id.* at 22:20-21, 23:11-14.

40. In determining he was not sufficiently rehabilitated, Ms. Keller considered that Mr. Walker was still probation, but also considered the character and length of his criminal history, particularly his crimes of dishonesty. *Id.* at 17:13-14, 18:16-22.

41. Ms. Keller also determined Mr. Walker was untrustworthy and a source of injury and loss to the public. *Id.* at 24:8-14.

CONCLUSIONS OF LAW

1. The insurance department is under the control and supervision of the commissioner. Section 33-1-301(1), MCA.
2. The commissioner has jurisdiction over this matter. *See generally* § 33-1-311, MCA.
3. The commissioner administers the department to ensure the interests of insurance consumers are protected. Section 33-1-311(3), MCA.
4. An applicant for an independent adjuster license is required to comply with the Montana Insurance Code, Chapter 33 of the Montana Code Annotated. Section 33-17-1001(c), MCA.
5. To be licensed as an individual adjuster, the applicant "must be trustworthy and of good character and reputation." Section 33-17-301(2)(d), MCA.
6. The commissioner may refuse to issue an independent insurance adjuster license when the applicant has been convicted of a felony. Section 33-17-1001(1)(e), MCA.

7. However, the commissioner may not refuse to issue a license solely on the basis of a criminal conviction, but must determine: (a) whether the applicant's criminal conviction bears a close relationship to public health, welfare, and safety as it applies to the occupation for which licensure is sought; and (b) whether the applicant has been sufficiently rehabilitated. *See Ulrich v. Bd. Of Funeral Services*, 961 F.2d 126, 132, 133 (Mont. 1998) (citing § 37-1-203, MCA).

8. The CSI's refusal to issue a license to Mr. Walker was not based solely upon a felony conviction; rather, the decision was made based upon Mr. Walker's lengthy criminal background, including multiple felonies with the most recent dating just over four years prior to Mr. Walker's application date, and failure to rehabilitate.

9. The CSI properly refused to issue a license to Mr. Walker because:

- a. Mr. Walker's felony convictions of theft, burglary, and obstruction of justice, and his misdemeanor convictions of issuing a bad check and obstructing a peace officer or other public servant are crimes of dishonesty; and Mr. Walker's eighteen-year-long criminal career, conviction of crimes involving dishonesty, current probation, and history of probation violations bear a close relationship to public health, welfare, and safety as it applies to the occupation of an insurance adjuster because they indicate Mr. Walker is not trustworthy or of good character and reputation and, if licensed, Mr.

Walker would regularly handle insured's funds, maintain financial and personal information, and have access to insured's property.

- b. Mr. Walker's eighteen-year-long adult criminal career, conviction of crimes involving dishonesty, current probation, and history of probation violations indicate a failure to rehabilitate.

10. The commissioner also may refuse to issue a license when the "applicant is incompetent, untrustworthy, financially irresponsible, or a source of injury and loss to the public." Section 33-17-1001(1)(f), MCA.

11. The CSI properly refused to issue a license to Mr. Walker because his extensive criminal history and pattern of recidivism indicate he is untrustworthy and has been a source of injury and loss to the public.

ORDER

Having reviewed and considered all record information, including witness testimony and exhibits admitted during the hearing on this matter, it is ORDERED:

Pursuant to § 33-17-1001, MCA, Mr. Walker's application for an individual insurance producer license is DENIED.

DATED this 22nd day of January, 2018.



AISLINN SHAUJ-JENSEN
Hearing Examiner
Agency Legal Services Bureau
1712 Ninth Avenue
P.O. Box 201440
Helena, MT 59620-1440

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and accurate copy of the foregoing Order
Assuming Jurisdiction to be e-mailed and mailed to:

Michael Winsor
State Auditor's Office
840 Helena Avenue
Helena, MT 59601
mwinsor@mt.gov

Rian Matthew Walker
423 E. River Rock
Belgrade, MT 59714
wrian1975@gmail.com

DATED: January 23, 2018 
Jeremy S. Craft, Hearing Assistant